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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,160

09/12/2003

Alain Delpuch

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6786

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04/21/2009

SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV

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MINNEAPOLIS, MN 55402-0938

EXAMINER

MENDOZA, JUNIOR O

ART UNIT

PAPER NUMBER

2423

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/661,160</p>	<p>Applicant(s) DELPUCH ET AL.</p>	
	<p>Examiner JUNIOR O. MENDOZA</p>	<p>Art Unit 2423</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2423

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 04/01/2009 have been fully considered but they are not persuasive.

Regarding claims 1 and 23, applicant argues that McKissick does not teach "authoring data".

However, the examiner respectfully disagrees with the applicant. The current application's disclosure positively defines that "authoring data" may be alphanumeric data, e.g. text data, please see paragraph [0031] of the originally filed specification. In the same field on endeavor McKissick discloses receiving data related to the program being watched by the user, for example: questions about a game show such as jeopardy (figure 11), statistical data related to a football game received as a message sent by another user (figure 18), etc., paragraphs [0109] and [0127]. Therefore, the program related data distributed with the program content clearly reads on "authoring data".

Regarding claims 1 and 23, applicant argues that McKissick in view of Goodman in view of Fristoe further in view of Danker do not teach "multiplexing together said television content, said authoring data and said authoring application proximate in time".

However, the examiner respectfully disagrees with the applicant. McKissick discloses sending television content and authoring data related to the content where the receiver displays the authored content by means of an executed on-screen-display application, paragraphs [0109] and [0127] also discussed above. Although, McKissick discloses that the television content and authoring data are sent together in real time allowing the user to interact with the program, McKissick still does not explicitly disclose the teaching of multiplexing a television content and authoring data together in time. Nonetheless, Danker discloses the well known teaching of multiplexing television content together with authoring data (alphanumeric data) and transmitting said content in a television network; paragraph [0014] also exhibited on figure 1 and 2. However, McKissick does not explicitly disclose that the executed on screen display application is received together with the television content. Nonetheless, Goodman fulfills such feature by introducing the general teaching of multiplexing television content with an executable television application, as exhibited on col. 1 lines 21-32; col. 2 lines 18-51; col. 4 lines 43-60; also exhibited on figs 1 and 5 - multiplexer 14 at broadcast station 10. Fristoe further discloses transmitting television content and an application on the fly, i.e. proximate in time, after receiving a request for content, as exhibited on col. 6 lines 4-15, col. 7 lines 27-29 also exhibited on figure 3. Therefore, the combination of McKissick, Goodman, Fristoe and Danker clearly disclose "multiplexing together said television content, said authoring data and said authoring application proximate in time".

Regarding claims 1 and 23, applicant argues that McKissick in view of Goodman in view of Fristoe further in view of Danker do not teach "enable the user to create new authored content said new authored content including the authoring data associated with the television content as selected by said user".

However, the examiner respectfully disagrees with the applicant. In the same field on endeavor McKissick discloses that the users may update and modify the received authored data, e.g. jeopardy questions, program related survey, etc, where the new content created by the user equates to user inputs such as writing an answer to a question or answering multiple choice questions and sending the modified authored data to a destination address such as the program entity, paragraphs [0109] - [0111]. McKissick further recites that a first user may attach program related information (authoring data) such as the score of a football game to a message sent to a second user, paragraph [0130] figure 18.

Regarding claims 1 and 23, applicant argues that there is not motivation to combine the cited references since the systems have conflicting goals.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the applicant claims that the cited references have conflicting goals; nonetheless, the examiner points out that McKissick was combined with Goodman, Fristoe and Danker in order to clearly point out features which are not explicitly disclosed by McKissick or features and algorithms which are well known in the art and would have been obvious and recognized by one of ordinary skill in the art.